

UNITED STATES DISTRICT COURT
DISTRICT OF DELAWARE

RICHARD C. HUNT,)
)
Plaintiff,) C.A. No. 04-1417 ***
)
v.)
)
FIRST CORRECTIONAL MEDICAL) JURY OF 12 DEMANDED
SERVICES, et al.,)
)
Defendants.)

**RESPONSE TO PLAINTIFF'S MOTION FOR TEMPORARY RESTRAINING
ORDER**

Defendant First Correctional Medical hereby requests that the Motion by the Plaintiff for a Temporary Restraining Order be denied for the following reasons:

1. Plaintiff filed the above referenced Motion on October 22, 2007. The Motion appears to be in error. On October 11, 2004 plaintiff filed a similar Motion in this Court docketed as 04-cv-01357-KAJ a copy of this docket is attached as Exhibit A. As evidenced by the docket sheet this case was dismissed on December 13, 2004.
2. On October 18, 2007 plaintiff was deposed by defendant First Correctional Medical and by the state defendants. During the course of the deposition the plaintiff indicated that he had a number of documents that he had not turned over to the defendants. In the course of the deposition the defendants requested those documents be turned over to them. See relevant portions of the deposition transcript attached as Exhibit B. It appears from the Certificate of Service attached to the Motion for Temporary Restraining Order that the

plaintiff was merely responding to our Request for Production of Documents.

Not only did he attach the Motion for Temporary Restraining Order, but he attached a number of other documents that were requested during the course of the deposition.

3. From the face of this document it appears that plaintiff mistakenly styled his response to Request for Production as a Motion for Temporary Restraining Order, therefore the Motion should be denied.
4. In the alternative, if the Court believes that this is a true request for a Restraining Order the Motion should be denied because the plaintiff has failed to meet any of the requirements necessary for a Court to grant a Motion for a Temporary Restraining Order. A Restraining Order is an extraordinary remedy. *NutraSweet Company v. Bit-Mar Enters., Inc.*, 176F.3d 151,153 (cir. 1999). There are full requirements that have been outlined by the Third Circuit that a Court has to consider when deciding to grant a Temporary Restraining Order:
 - (1) Success on the Merits,
 - (2) Irreparable harm to the moving party,
 - (3) The harm to the non-moving party will not greater than the relief sought, and
 - (4) The public interest. *Rogers v. Corbett*, 468F3d 188,192, (3d Cir. 2007) (*admitted*). as the burden rests with the moving parties to prove all of these requirements. *P.C.*

Yonkers, Inc. v. Celebrations The Party & Seasonal Superstore LLC 428F3d 504, 508 (3d Cir. 2005).

5. If, in this, the plaintiff is seeking a Temporary Restraining Order he has not met his burden. He has not shown that first of all there would be likelihood of success on the merits. He is seeking relief for a medical problem that was addressed in the year 2004. The issue is moot. The plaintiff has shown no irreparable harm because the plaintiff received the medical treatment he desired. As to the other requirements plaintiff has not even made a showing that such relief is necessary and therefore he has not met the requirements. On its merits the plaintiff's Motion should also be denied.

WHEREFORE, defendant First Correctional Medical requests the Court deny Plaintiff's Motion for Temporary Restraining Order.

HECKLER & FRABIZZIO, P.A.

/s/Daniel L. McKenty
Daniel L. McKenty, DE Bar No.
2689
Gerald J. Hager, DE Bar No. 4097
800 Delaware Avenue, Suite 200
PO BOX 128
Wilmington, DE 19899
Attorney for Defendant

Date: November 12, 2007

File No. 17860/370417

UNITED STATES DISTRICT COURT
DISTRICT OF DELAWARE

RICHARD C. HUNT,)
)
Plaintiff,) C.A. No. 04-1417 ***
)
v.)
)
FIRST CORRECTIONAL MEDICAL) JURY OF 12 DEMANDED
SERVICES, et al.,)
)
Defendants.)

ORDER

By **ORDER** of the **COURT** having considered plaintiff's Motion for Temporary Restraining Order, and defendant First Correctional Medical response thereto:

The **MOTION** is hereby denied.

J.

DATE:

File No. 17860/370422

UNITED STATES DISTRICT COURT
DISTRICT OF DELAWARE

RICHARD C. HUNT,)
)
Plaintiff,) C.A. No. 04-1417 ***
)
v.)
)
FIRST CORRECTIONAL MEDICAL) JURY OF 12 DEMANDED
SERVICES, et al.,)
)
Defendants.)

CERTIFICATE OF SERVICE

I certify that, on this date, a copy of this Response to Plaintiff's Motion for Temporary Restraining Order was served upon the following individuals:

Via First Class Mail

Richard C. Hunt
SBI# 274714
Delaware Correctional Center
1181 Paddock Rd.
Smyrna, DE 19977

Via Electronic Service
Eileen Kelly, Esquire
Department of Justice
820 N. French St., 6th Fl.
Wilmington, DE 19801

HECKLER & FRABIZZIO, P.A.

/s/Daniel L. McKenty

Daniel L. McKenty, DE Bar No.
Gerald J. Hager, DE Bar no. 4097
800 Delaware Avenue, Suite 200
PO BOX 128
Wilmington, DE 19899
Attorney for Defendant

Date: November 12, 2007
File No. 17860/370424

EXHIBIT A

CLOSED

**U.S. District Court
District of Delaware (Wilmington)
CIVIL DOCKET FOR CASE #: 1:04-cv-01357-KAJ**

Hunt v. Taylor, et al
Assigned to: Honorable Kent A. Jordan
Demand: \$0
Related Case: 1:06-cv-00324-***
Case in other court: USDC/DE, 04cv1349UNA
Cause: 42:1983 Prisoner Civil Rights

Date Filed: 10/13/2004
Date Terminated: 12/13/2004
Jury Demand: None
Nature of Suit: 555 Prisoner: Prison Conditions
Jurisdiction: Federal Question

Plaintiff**Richard C. Hunt**

represented by **Richard C. Hunt**
SBI#274714
Delaware Correctional Center
1181 Paddock Road
Smyrna, DE 19977
PRO SE

V.

Defendant**Stan Taylor***Commissioner of Corr.***Defendant****Warden Rapheal Williams****Defendant****First Corr. Medical**

Date Filed	#	Docket Text
10/13/2004	1	MOTION by Richard C. Hunt with Proposed Order for Temporary Restraining Order (mwm) (Entered: 10/14/2004)
10/20/2004	2	CASE assigned to Judge Kent A. Jordan . Notice to all parties. (rjb) (Entered: 10/20/2004)
10/25/2004	3	ORDER - assessing \$150.00 filing fee and requesting pltf to submit an application to proceed w/out prepayment of fees and a certified copy of his trust fund account statement. Failure to submit items w/in 30 days will result in dismissal w/out prejudice. Set Notice of Compliance deadline to 11/24/04 for Richard C. Hunt (signed by Judge Kent A. Jordan) copies to Pltf w/Mag. Consent Form (rwc) (Entered: 10/26/2004)

10/25/2004		FILING FEE \$ 150.00 assessed. (rwc) (Entered: 10/26/2004)
12/13/2004	4	Order of Dismissal for Failure to Prosecute. Pltf has failed to submit an Application to Proceed in forma pauperis and certified trust account statement as directed per Order [DI#3]. (signed by Judge Kent A. Jordan) copies to: Pltf (rwc) (Entered: 12/14/2004)
12/13/2004		Case closed per DI#4. (rwc) (Entered: 12/14/2004)

PACER Service Center			
Transaction Receipt			
11/12/2007 11:48:11			
PACER Login:	wm0093	Client Code:	
Description:	Docket Report	Search Criteria:	1:04-cv-01357-KAJ Start date: 1/1/1970 End date: 11/13/2007
Billable Pages:	1	Cost:	0.08

UNITED STATES DISTRICT COURT OF
DELAWARE IN AND NEWCASTLE COUNTY, STATE OF DELAWARE

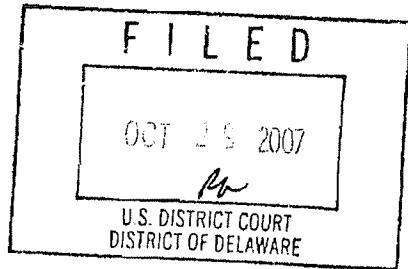
Richard C. Hunt
PETITIONER

CA 04-1417 ***

v
Commissioner of Corr. Stan Taylor

Warden Raphael Williams

First Corr. Medical
DEFENDANTS



Motion For Temporary Restraining Order

Comes now Petitioner Richard C. Hunt
Pursuing to Federal rules and regulations.
And Moves for this Court to ISSUE a ORDER
Compelling the Defendants to provide immediate
Medical attention as indicated HERE in.

Richard C. Hunt

Petitioner

10.11.04

DATE

United States District Court District of
Delaware in and Newcastle County State of Delaware

Richard C. Hunt

Petitioner



Commissioner of Corr. Stan Taylor

Warden Raphael Williams

First Corr. Medical

Defendants

TEMPORARY
RESTRANDING
ORDER

IT IS ORDERED

On This Day ————— OF OCT. 2004

Is ordered that Defendants as of
the above date provide and comply with
the following within 7 days.

1. Have the defendant taken to the nearest hospital for medical care
2. Such care is to be documented and the results of medical care and documentation is to be provided to petitioner and this court within time stated.

THE HONORABLE _____

THE UNITED STATES DISTRICT COURT
LOCK BOX 18
844 N. KING STREET
WILMINGTON, DELAWARE 19801

Delaware Center for Justice
100 West 10th Street, Suite 905
Wilmington, DE 19801

Adult Offender Services Program

Date: January 21, 2005

**Richard Hunt # 274714
Howard R. Young Correctional Inst.
P.O. Box #9561
Wilmington, DE 19809**

Dear Mr. Hunt:

This is to acknowledge receipt of your letter. After careful review of your letter, the following decision has been reached:

- We do not deal with the issue(s) in your letter
- We advise you to contact your institutional medical provider
- Provide additional information on the matter for follow up
- Contact your Counselor at the institution for help and guidance
- We will contact you upon further investigation and follow up
- File a grievance using the internal 4.4 Grievance Procedure
- Requested information enclosed
- Other: After reviewing your case it is apparent that DCJ will not be able to address your concerns of why treatment was delayed. However, it is my intent to monitor your current grievance (BGO level) to ensure it is in accordance with the 4.4 grievance policy and procedures.

Thank you for your interest in our agency.

Sincerely,


Nikita Y. Robins
Case Manager, Adult Offender Services

Certificate of Service

I, Richard Hart, hereby certify that I have served a true

And correct cop(ies) of the attached: Production of Documents
And things to Defendants upon the following

parties/person (s):

TO: Catherine Damavandi
Deputy Attorney General
CAROL STATE OFFICE building
820 North French Street 8th floor
Wilmington, DE 19801

Office of the Clerk
TO: United States District Court
844 N. King Street Lockbox 18
Wilmington, DELAWARE
19801-3540

TO: Gerald Hager
Hegeler & Trabizzio
800 Delaware Avenue
Suite 200
P.O. Box 128
Wilmington, DE 19899

TO: _____

BY PLACING SAME IN A SEALED ENVELOPE, and depositing same in the United States Mail at the Delaware Correctional Center, Smyrna, DE 19977.

On this 12 day of October, 2007

Richard Hart

RICHARD HUNT
274714 UNIT 10 A L#4

WATER CORRECTIONAL CENTER
DDOCK ROAD
DE, DELAWARE 19977

LEGAL MAIL



Office of the Clerk

United States District Court
844 N. King Street, Box 18
Wilmington, Delaware
19801-3510

LEGAL MAIL

EXHIBIT B

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1 to put in because they didn't bring all my stuff down here
2 and a lot of my paperwork got took. And what I was
3 looking for was my medical, like I wrote my medical record
4 like for myself.

5 Q. You took notes?

6 A. Every day. Yeah, I took notes every day what
7 they told me. I had that in my room. I wrote everything
8 they said down and I really couldn't get copies and they
9 didn't even send -- they didn't send it. They sent it
10 real late. You know what I mean? So I really haven't got
11 copies of it. I just got it so they -- of my medical
12 history.

13 Q. So you're saying that while you were in the
14 infirmary you took your own notes about what was going on.

15 A. Yes. I asked him everything.

16 Q. Do you have that now?

17 A. Yes. Not on me. It's --

18 Q. Could you provide Ms. Damavandi with a copy of
19 that?

20 A. Yeah.

21 MR. HAGER: And me too, please.

22 THE WITNESS: Yeah; because I wrote
23 everything down what they told me. Every time I just
24 -- slow it back. So I'm in the infirmary. I stayed
25 there till like -- like December '04 because I had to

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1 get wired up so she said the 20th -- Dr. Diane
2 Hernandez said the 20th she put in the causaltation
3 [sic] whatever it's called.

4 BY MS. KELLY:

5 Q. Consultation request?

6 A. Yeah. To go out to the hospital. So that was
7 like the same day she put it in and she was like, Well,
8 it's up to security to let you out to take you to the
9 hospital, it's up to security. So and this was the 20th,
10 September 20th. So I wrote -- if you look I got a medical
11 grievances asking them why they're not sending me to --
12 sending me to the outside hospital.

13 Q. I'm asking you do you have anything?

14 MR. HAGER: Pardon me?

15 THE WITNESS: I'm asking do you have
16 anything on me putting in grievances --

17 MS. KELLY: I have a grievance here --

18 THE WITNESS: -- October I think the 8th,
19 around that time because that whole time I'm asking
20 them is you all going to get me to the hospital, is
21 you going to get me to the hospital?

22 BY MS. KELLY:

23 Q. What were you told?

24 A. I was told that you're waiting on a -- it's up
25 to security to let you go.

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1 grievance dated 10/14/04 and as an Exhibit but the
2 number is cut off at the bottom of the copy that I
3 have.

4 MS. KELLY: That's attached to the
5 Complaint.

6 MR. HAGER: Attached to the Complaint,
7 correct.

8 BY MS. KELLY:

9 Q. Do you have that?

10 A. Because I know I got it. I'm saying I know I
11 got it but I just can't --

12 Q. If you can't find it you can send it to me
13 later if you find it later.

14 A. I know you have it already because I put it --
15 I put it with my initial Complaint.

16 MS. KELLY: Maybe it's --

17 MR. HAGER: It's not in the Complaint that
18 I ever seen.

19 THE WITNESS: Like they violating my
20 constitutional right.

21 MS. KELLY: It might be with the . . .

22 THE WITNESS: Because was I telling them
23 that they not, you know, they not letting me --
24 they're not taking me out to the hospital because my,
25 you know what I mean, it took them a whole month to

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1 get me to the hospital. From -- it happened
2 September 17th, they found out it was broke the 20th,
3 they didn't get me out till the 18th of October to
4 get my jaw wired.

5 This is not even half the papers that I
6 got. I don't know why I don't have it in here.

7 MS. KELLY: I'm not saying that I
8 definitely don't have it, but I can't find if I have
9 it. I don't see it attached to the Complaint.

10 MR. HAGER: No, I didn't see it attached to
11 my Complaint either.

12 MS. KELLY: No. If you can't find it now

13 --

14 THE WITNESS: Yeah. I'll find it for you.

15 MS. KELLY: -- then you can send it to me
16 and to Ms. Catherine Damavandi and to Mr. Hager, that
17 would be good, if you find it.

18 THE WITNESS: Because I know I wrote it
19 because if I got it it was attached with this. These
20 is like old motions for appointment of counsel so,
21 most of these. But I got it. It ain't with me right
22 now. I got it so I'll send that to you.

23 MS. KELLY: To Ms. Damavandi.

24 MR. HAGER: And to me, please, Gerald
25 Hager.

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1 while longer?

2 A. Yeah, yeah; because he said I might need more
3 surgery, possibly more surgery or something.

4 Q. Once your jaw -- once you could move your jaw
5 again or chew a little bit then you were sent back to?

6 A. Population. I went to 1C.

7 Q. By then you were sentenced; is the right?

8 A. Yeah. I got sentenced the 22nd of September.

9 I wasn't sentenced when it happened though.

10 Q. From the time you had your procedure in
11 October till December what kind of things were they doing
12 for you in the infirmary?

13 A. They were just -- D'Amico prescribed me
14 Tylenol 3. Wasn't working so I had to tough it out.
15 Pretty much they wouldn't -- at this time they were, Oh,
16 I'm tired of hearing this because I was complaining. Yo,
17 you need to get me to the hospital. So once a person who
18 is, you know, like that in the infirmary it gets on their
19 nerves because they feel as though I can't get him up,
20 security is holding him and why you keep, you know, why
21 you keep asking, you know, to go out. I'm like because my
22 jaw is broken. All right, we know your jaw is broken. We
23 going to send you; we going to send you; we going to send
24 you. So I put in a restraining order. I filed a
25 restraining order with the Judge. I got that too.

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1 Q. What Court was that?

2 A. Same Court.

3 Q. District Court?

4 A. Yeah. And I asked him for ten days for them
5 to get me to the hospital and this was the -- I think it
6 was -- I put in a thing, I put it in -- I'm not sure but
7 got it. I know I got it. I put it in and actually ten
8 days to get me to the hospital. So it was like they got
9 me out that like 10th, 7th day, one of them, they took me
10 to the hospital.

11 Q. So you asked -- you filled a petition --

12 A. Yeah; restraining order.

13 Q. -- with the court and how long after that were
14 you taken to Dr. D'Amico?

15 A. Right in between that seven to ten days.

16 Q. That case was called Hunt versus who?

17 A. State of Delaware.

18 Q. Okay.

19 A. I ain't get -- I didn't get a response back.
20 It was just that it happened that fast. You know, they
21 got me out within that time because I kept threatening
22 them. I'm going to file a restraining order on you. You
23 know what I mean? You're violating my constitutional
24 rights and, you know, stuff like that so they was getting
25 tired of me so they was like, you know, dealing with him.

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1 got plenty of copies of everything that I did and that's
2 from the 17th.

3 I didn't know you all was coming so I really I
4 couldn't bring everything anyway but this was the only
5 thing I could grab. And this is like the whole seven file
6 that I have but I got -- due to this I can't even -- I
7 couldn't bring everything, pull everything out to show
8 you.

9 Q. Mr. Hunt, we sent you a Request for Production
10 of documents along with our Interrogatories and you
11 haven't responded to that yet and that would be like a
12 copy of all the documents that you have. Are you
13 intending to respond to that?

14 A. Yes. I'm -- I can't. It's hard to do
15 anything. I'm locked in. They -- put a request in for
16 legal, it takes a lot of time.

17 Q. I'm going to go through your Interrogatories.
18 Seems in all your Answers your main complaint against
19 First Correctional is that you weren't treated in a timely
20 manner.

21 A. Correct.

22 Q. And you're not complaining about the work that
23 Dr. D'Amico did, are you?

24 A. No.

25 Q. Who exactly told -- do you recall any names of

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1 go check your file, Oh, he's got a active lawsuit. We're
2 not dealing with him because they don't want to get
3 involved. They don't want to be a part of anything so
4 they had talked to you, Oh, you all right? No, I'm not
5 all right. What's the problem? You tell them and then
6 it's, all right, we'll be back. You know what I'm saying?
7 For a whole two weeks.

8 Q. So you're saying once anybody in the prison
9 who is an employee, an official, works for medical, works
10 for the Department of Correction, once they find out you
11 filed a lawsuit they don't -- they treat you differently?

12 A. Yes. They want to stay away from you. They
13 don't -- you pretty much, it's not -- like I'm not getting
14 involved in that.

15 Q. But you say you've got this treatment, the
16 same type of treatment when you were in the infirmary
17 between the time that you were put in the infirmary
18 September 2004 through the time you went to see
19 Dr. D'Amico?

20 A. Yeah.

21 Q. You hadn't filed a lawsuit at that time, had
22 you?

23 A. I filed it in October. I filed them I think
24 -- I filed them in I think in -- I think in October but
25 the one for -- against Emig and them was dismissed because

Richard C. Hunt

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1 I failed to put in I think it was a US Marhsal to put in
2 the form so I had to refile that. But the medical you all
3 didn't even respond until sometime I think this year.

4 Q. But you -- between the time you were first --
5 you first went into the infirmary for this incident --

6 A. I waited till -- I waited till they was going
7 to respond back to my grievances and once I knew they
8 wasn't responding back to anything that's when I filed. I
9 made sure that I tried to exhaust my options first with
10 everything and as you can see through the amount of the
11 paperwork I got they didn't have -- they just treated it
12 was like nothing happened.

13 Q. Have any of your grievances been resolved?

14 A. No, I don't resolve them. I try to keep
15 going, like keep them -- but we can't do nothing. You
16 already got -- they basically told me you already got what
17 you wanted. You already got your jaw wired, now be quiet.

18 Q. Who told you that?

19 A. Basically Nurse Diane. I gotta respond back
20 to you as far as like all the documents that I got from
21 the medical so I'll get copies and send you all them.

22 MR. HAGER: Please, please.

23 THE WITNESS: I got to send you that too.

24 Right?

25 MS. KELLY: Right.